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**NUNC PRO TUNC**

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**FILED**

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CLERK OF U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Attorney for Material Witnesses

BY YWH DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Francisco Zapot-Palacios

Defendant.

Case No. 08cr1696-H

STIPULATION & ORDER TO SET  
VIDEOTAPED DEPOSITIONS OF  
MATERIAL WITNESSES: VALENTIN  
GONZALEZ-MIRANDA; EMMANUEL  
SANCHEZ-RUBIO; & CANDIDO  
MUNOZ- PALACIOS

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES, that:

1. The material witnesses being held in custody in case number 08cr1696-H, namely Valentin Gonzalez-Miranda; Emmanuel Sanchez-Rubio; and Candido Munoz-Palacios (hereinafter, "Material Witnesses"), shall be deposed on June 30, 2008, beginning at 10:30 a.m. The depositions shall be held at the Office of the United States Attorney located at 880 Front Street, Fifth Floor, San Diego, California.

2. All parties, meaning the United States and the defendant(s), shall attend the material witness deposition. The arresting agency shall bring the Material Witnesses to the deposition. If, in custody, the defendant shall be brought separately to the deposition and a United States Marshal shall remain present during the proceeding.

3. The U.S. Attorney's Office shall provide a videotape operator ("operator") and if necessary, arrange for a court-certified interpreter to be present for the Material Witness(es). The cost of the interpreter for the Material Witness(es) shall be borne by the United States Attorney's Office.

1           4.     If the defendant needs an interpreter other than the interpreter for the Material  
2     Witness(es) (if any), then defense counsel shall arrange for a court-certified interpreter to be  
3     present. The cost of a separate interpreter for the defendant(s) shall be paid by the Court.

4           5.     The United States Attorney's Office shall arrange for a certified court reporter to be  
5     present at the deposition. The court reporter shall stenographically record the testimony, serve as  
6     a notary and preside at the deposition in accordance with Rule 28(a) of the Federal Rules of Civil  
7     Procedure. The cost of the court reporter shall be borne by the United States Attorney's Office.

8           6.     The deposition shall be recorded by videotape, meaning a magnetic tape that records  
9     sound as well as visual images. At the conclusion of the deposition, on the record, the witness(es),  
10    or any party may elect to have the witness(es) review the videotape record of the deposition to check  
11    for errors or omissions and to note any changes. Any errors, omissions or changes, and the reasons  
12    for making them, shall be stated in writing, signed by the witness(es), delivered to the notary in a  
13    sealed envelope and filed in the same fashion as described in Paragraph 17 below, unless the parties  
14    agree on the record to a different procedure.

15          7.     The operator shall select and supply all equipment required to videotape the  
16    deposition and shall determine all matters of staging and technique, such as number and placement  
17    of cameras and microphones, lighting, camera angle, and background. The operator shall determine  
18    these matters in a manner that accurately reproduces the appearance of the witness(es) and assures  
19    clear reproduction of both the witness(es)' testimony and the statements of counsel. The witness(es),  
20    or any party to the action, may object on the record to the manner in which the operator handles any  
21    of these matters. Any objections shall be considered by the Court in ruling on the admissibility of  
22    the videotape record. All such objections shall be deemed waived unless made promptly after the  
23    objector knows, or had reasonable grounds to know, of the basis of such objection.

24          8.     The deposition shall be recorded in a fair, impartial and objective manner. The  
25    videotape equipment shall be focused on the witness(es); however, the operator may, when necessary  
26    or appropriate, focus upon charts, photographs, exhibits, or like material being shown to the  
27    witness(es).

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1           9.     Before examination of the Witness(es) begins, the Assistant U.S. Attorney shall  
2 state on the record Her/His name; the date, time and place of the deposition; the name of the  
3 Witness(es); the identity of the parties and the names of all persons present in the deposition room.  
4 The court reporter shall then swear the Witness(es) on the record. Prior to any counsel beginning  
5 an examination of the witness(es), that counsel shall identify himself/herself and his/her respective  
6 client on the record.

7           10.    Once the deposition begins, the operator shall not stop the videotape recorder until  
8 the deposition concludes, except that, any party or the witness(es) may request a brief recess, which  
9 request will be honored unless a party objects and specifies a good faith basis for the objection on  
10 the record. Each time the recording is stopped, the operator shall state on the record the time the  
11 recording stopped and the time it resumed. If the deposition requires the use of more than one tape,  
12 the operator shall sequentially identify on the record the end and beginning of each tape.

13           11.    All objections both as to form and substance shall be recorded as if the objection had  
14 been overruled. The Court shall rule on objections at the appropriate time. The party raising the  
15 objection(s) shall prepare a transcript for the Court to consider. All objections shall be deemed  
16 waived unless made during the deposition.

17           12.    The party offering the deposition into evidence at trial shall provide the Court with  
18 a transcript of the portions so offered.

19           13.    Copies of all exhibits utilized during the videotaped deposition shall be attached to  
20 the videotaped record.

21           14.    At the conclusion of the deposition, any objection, including the basis, to release of  
22 the material witness(es) from custody shall be stated on the record. If there is no objection, the  
23 attorney for the material witness(es) shall immediately serve all parties with a "Stipulation and  
24 Proposed Order for Release of the Material Witness(es)" and submit the Order to the Clerk of the  
25 Court for the Judge's signature. Prior to release from custody the attorney for the Government shall  
26 serve the material witness(es) with a subpoena for the trial date and a travel fund advance letter.

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1           15.     The operator shall provide a copy of the videotape deposition to any party who  
 2 requests a copy at that party's expense. After preparing the requested copies, if any, the operator  
 3 shall deliver the original videotape to the notary along with a certificate signed by the operator  
 4 attesting that the videotape is an accurate and complete record of the videotaped deposition. The  
 5 notary shall file the original tape and certification with the Clerk of Court in a sealed envelope  
 6 marked with the caption of the case, the name of the witness(es) and the date of the deposition.

7           16.     The notary shall file with the Clerk of Court in a sealed envelope the original  
 8 videotape, along with any exhibits offered during the deposition. The sealed envelope shall be  
 9 marked with the caption of the case, the name of the witness(es) and the date of the deposition. To  
 10 that envelope, the notary shall attach the certificate of the operator. If all counsel stipulate on the  
 11 record, the Government may maintain the original videotape until production is ordered by the Court  
 12 or requested by any party.

13           17.     Unless waived by the parties, the notary shall give notice to all parties of the filing  
 14 of the videotaped deposition with the Court pursuant to Federal Rule Civil Procedure 30(f)(3).

15           18.     If any party objects on the record to the release of the material witness(es) from  
 16 custody, the objecting party must request in writing a hearing on the issue before the federal judge  
 17 who is assigned the case or to such other district judge or magistrate judge as they designate. Notice  
 18 of the Request for Hearing must be served on all parties and filed with the Clerk of Court within  
 19 twenty-four (24) hours after the completion of the deposition, with a courtesy copy to chambers. The  
 20 Court will set a briefing schedule, if appropriate, and a date and time for the objection to be heard  
 21 as soon as reasonably practicable. At the hearing, the objecting party must establish to the Court's  
 22 satisfaction an appropriate legal basis for the material witness(es) to remain in custody. If, after the

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1 hearing, the Court orders the release of the material witness(es), the material witness(es)' attorney  
2 shall immediately present the release order to the Court for signature and filing. Before release of  
3 the material witness(es) from custody, the Government shall serve the material witness(es) with a  
4 subpoena for the trial date and a travel fund advance letter.

5 IT IS SO STIPULATED BY AND BETWEEN THE PARTIES.

6 UNITED STATES ATTORNEY  
Karen P. Hewitt

7  
8 DATED: 6/18/08

By: 

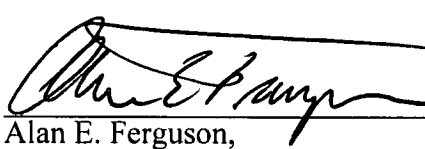
Dale Blankenship  
Assistant United States Attorney

9  
10  
11 DATED: 6-18-08



Gary Edwards,  
Attorney for Defendant

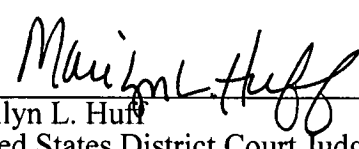
12  
13  
14 DATED: 6-9-08



Alan E. Ferguson,  
Attorney for Witness(es)

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17 IT IS SO ORDERED.

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20 DATED: 6/19/08



Marilyn L. Huff  
United States District Court Judge